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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

JEANNE PASLE-GREEN, No. 03-12842

Debtor(s).

JEANNE PASLE-GREEN,

Plaintiff(s),

v. A.P. No. 04-1011

EDUCATIONAL CREDIT MANAGEMENT
CORPORATION,

Defendant(s).

Memorandum of Decision

Debtor and plaintiff Jeanne Pasle-Green obtained a humanities-related Ph.D. in 2000, at the age of 61. Now 65, she has been unable to obtain any employment in her field and is working part-time as a cashier at a book store for \$7.50 an hour. She also receives Social Security payments of \$736.00 per month, allowing her to maintain a minimal standard of living with no discretionary income available for debt repayment. In this adversary proceeding, she seeks discharge of her student loans on grounds of undue hardship pursuant to § 523(a)(8) of the Bankruptcy Code.

1 Based more on her age and observation of her physical and emotional frailty in court than on
2 anything in her testimony, the court is convinced that Pasle-Green is incapable of repaying her student
3 loans and still maintaining a minimal standard of living and that this state of affairs is likely to persist for
4 into the foreseeable future. This satisfies the first two prongs of the three-part test for undue hardship.
5 *In re Marks*, 308 B.R. 436, 443 (9th Cir. BAP 2004). If not for the third prong, the court would order the
6 student loans discharged without need for further analysis.

7 The third prong requires the debtor to demonstrate that she has made good faith efforts to
8 repay the loans. The court bristles at having to impose this test on the debtor, as it is the worst of judge-
9 made law. Not only does past effort to repay the loans have nothing whatsoever to do with present
10 hardship, but Congress knows how to draft a good faith provision if it wanted one. See, e.g., §
11 1129(a)(3) and § 1325(a)(3) of the Bankruptcy Code. Nonetheless, the court is obliged to follow the
12 law as it is, and not as the court thinks it should be.

13 Pasle-Green has never made any payments on her student loans. However, her un-controverted
14 testimony is that she has never been able to do so. She has kept the lender informed of her address and
15 has applied for deferments. Since this is all she has been capable of, the court declines to interpret the
16 third prong as requiring payment. The court finds it sufficient that she has done all she is capable of
17 doing.

18 For the foregoing reasons, the student loans will be discharged. A separate judgment will be
19 entered. This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and
20 FRBP 7052.

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22 Dated: September 1, 2004

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24 
25 Alan Jaroslovsky
26 U.S. Bankruptcy Judge